

ORIGINAL

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C. 20036

In the Matter of

1984 Cable Royalty Distri-
bution Proceeding

CRT Docket No.
85-4-84 CD
Phase II

COMMENTS OF WARNER COMMUNICATIONS INC.
CONCERNING MPAA LETTER OF OCTOBER 3, 1986

Warner Communications Inc., Elektra/Asylum/
Nonesuch Records (a division of Warner Communications
Inc.), Atlantic Recording Corporation, Warner Bros.
Records Inc. and Geffen Records (collectively "Warner")
submit the following comments concerning MPAA's letter
of October 3, 1986 to the Tribunal.

MPAA requests the Tribunal to bar NAB from
participating in this proceeding with regard to Warner's
claim and to strike NAB's statement concerning the
proper classification of music videos. Warner takes no
position on MPAA's specific requests. Warner, however,
does wish to correct the record in response to MPAA's
misstatements as to the bases and consequences of
Warner's having dismissed its claim against NAB.

Warner has made a concerted and sincere effort to
resolve its claim for royalties attributable to music

videos outside the Tribunal. While this has not proved possible, Warner has succeeded in significantly narrowing the issues which the Tribunal must resolve. As indicated in the MPAA/Warner Stipulation filed with Warner's Direct Case, the only issues before the Tribunal "concern Warner's entitlement to receive royalties from the Tribunal and the proper category against which any such royalties should be awarded."

Warner strongly believes that its claim lies against the Program Suppliers category alone. Warner's music videos are "syndicated programs," as defined by the Tribunal, because they are broadcast by more than one television station. Moreover, as a matter of fundamental equity, MPAA's own conduct in the distribution proceedings (concerning program classifications and compilation) compels the conclusion that the Program Suppliers alone must take responsibility for compensating all music videos. Warner does not seek, nor does it want, to be part of any other Phase I category.

Consistent with and in light of this position, Warner dismissed its claim against all categories other than the Program Suppliers. The dismissal of Warner's claim against NAB means only that, regardless of the resolution of Warner's controversy with MPAA, the

Tribunal will not make any award to Warner out of the local category or otherwise value Warner's programming in comparison to truly local programming.

It does not mean, as MPAA speculates, that Warner has "settled any and all differences" with NAB; quite the contrary is the case.¹ Nor does it mean, as MPAA also speculates, that NAB "has no stake in the outcome" of Warner's dispute with MPAA.

During the past few months, Warner has been bounced around from one claimant group to the next with each party pointing the finger at someone else. Consistent with the Tribunal's August 15, 1986 Order, Warner is presenting evidence as part of its direct case which it believes will help the Tribunal resolve all the remaining music video issues. All parties will be bound in future proceedings by the Tribunal's rulings on the

¹ Warner and NAB agree that the music video claim lies against the Program Suppliers alone. NAB, however, takes the position that Warner would not be entitled to any royalties whatsoever if the Tribunal rules that Warner's claim lies against the local category. If the Tribunal adopts Warner's position in these proceedings, Warner will not seek or receive royalties from any category other than Program Suppliers.

music video issues to the extent that they are bound by
any other Tribunal ruling.

Respectfully submitted,

WARNER COMMUNICATIONS INC.
ELEKTRA/ASYLUM/NONESUCH RECORDS
ATLANTIC RECORDING CORPORATION
WARNER BROS. RECORDS INC.
GEFFEN RECORDS

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October 9, 1986

CERTIFICATE OF SERVICE

I, Helen Jean Bushnell, a secretary in the law firm of Arnold & Porter, certify that I have, this 9th day of October 1986, served copies of the foregoing "Comments of Warner Communications Inc. Concerning MPAA Letter of October 3, 1986" by first-class mail, postage prepaid, to the following parties:

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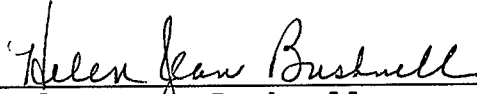
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October 9, 1986